

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,451

)

Appeal of)

)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare to recoup a total of \$1,513.00 in food stamp benefits by reducing the petitioner's ongoing food stamps by ten percent until the overpayment is fully recovered. The issue is whether the Department's decision is in accord with the statutes and regulations pertaining to the treatment of individuals who have been convicted of welfare fraud.

FINDINGS OF FACT

The petitioner does not dispute that in November, 1986, she pleaded guilty to a charge of illegally receiving \$4,452.00 in ANFC benefits and \$1,513.00 in food stamps.⁽¹⁾ As a result of the conviction the Court sentenced the petitioner to 60 days in jail (served on weekends) as part of a one-to-three year suspended sentence. The Court did not order the petitioner to pay "restitution" to the Department. Following her conviction the petitioner did not

apply again for food stamps until recently, when the decision to recoup the overpayment was made.

The petitioner contends that her guilty plea was based on her understanding that her time in jail would be the limit of her penalty and liability to the Department. However, nothing in the documents submitted by the Department reflects such a disposition by the Court or agreement by the Department.

ORDER

The Department's decision is affirmed.

REASONS

33 V.S.A. § 141(a) provides:

A person who knowingly fails, by false statement,

misrepresentation, impersonation, or other fraudulent means, to disclose a material fact used in making a determination as to the qualifications of that person to receive aid or benefits under a state or federally-funded assistance program, or who knowingly fails to disclose a change in circumstances in order to obtain or continue to receive under a program aid or benefits to which he is not entitled or in an amount larger than that to which he is entitled, or who knowingly aids and abets another person in the commission of any such act shall be punished as provided in section 143 of this title.

33 V.S.A. §143, referred to in the above section, provides in pertinent part:

(a) A person who knowingly violates a provision of

this title for which no penalty is specifically provided shall:

...

(2) If the assistance or benefits obtained pursuant to

a single fraudulent scheme or course of conduct are in violation of subsection (a) or (b) of section 141 of this title, and involve more than \$1,000.00, be fined not more than an amount equal to the assistance or benefits wrongfully obtained, or be imprisoned not more than three years, or both.

...

(b) If the person convicted is receiving assistance,

benefits or payments, the commissioner may recoup the amount of assistance or benefits wrongfully obtained by reducing the benefits or payments periodically paid to the recipient, as limited by federal law, until the amount is fully recovered.

In Fair Hearing Nos. 11,263, 10,442, and 4513 the Board held that a nolo contendere plea does not alter the Department's right to recoupment under these provisions. Clearly, the same must hold true for pleas of guilty.

Furthermore, the facts that the petitioner served time in jail and was not ordered to pay "restitution" does not alter the Department's right under § 143(b) supra to recoup from the petitioner's ongoing food stamp benefits the amount that was "wrongfully obtained." As was the case in Fair Hearing No. 11,263, the petitioner may well have misunderstood the full effect of her plea at the time she made it. If so, she is free to pursue this claim in Court. Unless and until she successfully does so, however, the fact of her conviction is res judicata for purposes of this proceeding (see infra). As was determined in Fair Hearing No. 11,263, 33 V.S.A. § 143, supra, acts as a civil remedy for the Department in addition to the terms of any criminal sentence--similar to an individual victim's right after a conviction (or even an acquittal) to separately collect civil monetary damages arising from the same criminal acts.

Inasmuch as the Department's decision to recoup the overpayment in this case is supported by the evidence and is in accord with the law it must be affirmed.

#

1. This case concerns only the food stamp overpayment.